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Dear Josh:

Many thanks for your thoughtful and lengthy comment on my paper. I am greatly encouraged by the many points on which we seem to agree, but will focus my response upon those where we differ.

(1) Vengeance. Descriptively, you are surely correct in insisting upon the importance of lawful punishment as a substitute for personal vengeance. I said nothing about this, because I really have nothing to say. If punishment of offenders serves both to discourage further offences (of a non-vengeful character) and also to reduce offences committed out of desire for revenge, then one might want to punish crime more severely than would be prompted by deterrence of non-vengeful offences.

(2) Precedent. I agree with your stress upon fear of bad precedents as an explanation of why some people resist any increase in police power. However, I point to the adverse effects upon proper exercise of personal freedom (e.g., to walk city streets at night, to give testimony in open court) of "precedents" of short sentences--or none at all--for serious crimes because of current standards of due process. This is not to dispute your point, but to indicate that concern with precedent may rationalize restriction of citizen rights to due process as well as the reverse.

Your fear of "uncontrolled police power" (p. 4) is traditional and appropriate; I share it. Obviously, no one wants either "uncontrolled" police power, or "rampant" crime. In 1931, a decent German would have wanted Storm Troopers curbed; in Sicily, stronger police power to curb the Mafia could have been justified; similarly for greater curbs on KKK activities in the Post-Bellum South, and so on. Fear of police power is entirely justified, but there can be too little as well as too much.

(3) Acculturation and Crime Reduction. Of course, it would be

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desirable if the world were to change so that individuals would choose to commit fewer crimes. However, I am unaware of any way quickly (or perhaps even slowly) to effect such a change. Variations in the "taste for wine" occur for reasons largely beyond our control. A sense of being wronged or alienated is, at most, only one determinant of the propensity to commit crime. For obvious reasons, it is a determinant ("cause") that fiction writers love to dwell upon. However, most members of "wronged groups" manage to live law-abiding lives despite their resentments. It is not obvious that those who do become criminals are more injured than others, or even more sensitive to injury; they may simply have a lower crime threshold.

I think that criminal activities by individuals (unacculturated or otherwise) are largely explicable in terms of the balance of costs and benefits from such activities to them, and that protestations of alienation and deprivation are a convenient rationalization for behavior whose causes are elsewhere. Social conditions should be improved regardless of their (lack of) effect on criminal activity. We need to alter the behavior of potential offenders long before we can hope to acculturate very many. Faute de mieux, I am led to rely upon deterrence.

(4) Empirical evidence. A critical point in your discussion, and in mine, is the state of the empirical evidence relating crime and punishment. I am disturbed by the paucity of such evidence, but offer a few references to such evidence of which I am aware. Two of these are papers by Issac Ehrlich which I will send you; another is a book, Sentencing in a Rational Society by Nigell Walker. (Basic Books, 1971). A third set of references are various articles scattered throughout The Journal of Legal Studies which is now in its fourth volume; and, finally, Richard Posner's book, An Economic Analysis of Law. These references, and the literature they cite, will give you a good sample of the state of knowledge about the empirical relationships among various crimes and punishment.

Admittedly, this knowledge is pitifully weak. It is far too weak to justify any new "large scale social restrictions on citizen rights." But, I submit that the balance of such evidence as there is points in a different direction from the stream of Supreme Court decisions since the early 1960's, which has compelled sharp alterations in the traditional procedures of police and courts in dealing with accuseds. The effect of these alterations has been to reduce the probability of convicting (guilty) law violators and the expected punishment of those who are convicted. The rationale of these decisions was, presumably, to reduce both the probability of convicting innocent parties, and the risk of excessively punishing those wrongly convicted. Granted that punishment of the innocent has been reduced, what has happened to the non-punishment of the guilty? And what has been the effect of (what I believe to be) the reduced expectation of punishment, given the commission of a crime?

I do not consider that the available evidence is sufficient categorically to assert that the effect of the above mentioned decisions was to increase

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crime. But I submit that the courts gave little weight and less investigation to the possibility of this outcome, and that they were influenced by some very poor pieces of "social science" research that purported to show the absence of a deterrent effect of punishment. In altering long-established institutions governing the process of apprehending, trying and punishing criminals, the courts acted without much evidence on--or even concern with--the possible adverse consequences of such alteration on the net deterrent effect of our system of criminal justice. Nevertheless, I would join you in opposing any precipitous reversal of these decisions.

(5) Cashless Society. Your remarks on a cashless society are interesting and provocative. It is my impression that there is a fair amount of research in progress on this topic. The costs and benefits of greater or less use of cash (currency and coins) involve a good deal more than just self-protection of property against theft. Lee Bach can probably put you in touch with people doing this research; if not, I can inquire around here.

6. "Search without warrant." Invasion of one's home is the most frightening illustration of insufficiently restrained police powers. But consider a law against carrying hand guns that was enforced, inter alia, by "stop and frisk." Stop and frisk is inconvenient and humiliating, and like all situations in which the police have discretion (or its synonym, "power"), subject to abuse. Clearly, it is search without warrant. But is it obvious that the potential gain is so small relative to the risk that the matter can be rejected out of hand?

Let me close by reiterating the concern we share for the protection of civil liberties and our apprehension of measures to increase police power. Also, I would emphasize our mutual feeling of ignorance about relevant empirical magnitudes and desire to avoid potentially dangerous legislation based on mere suppositions about them. But I hope we also share the conviction that the issues raised in my paper are genuine, and belong on the agenda of the scientific community.

Sincerely,



Melvin Reder

MR:ln

P.S. The capital punishment paper is not yet published but has become a newsworthy matter. Ehrlich has been advised to adopt a policy of not commenting on his findings to the media until it is published in the June issue of American Economic Review. He requests that any references to the paper prior to that time be cleared with him. Needless to say, he is very anxious to get your reaction and would be delighted to correspond with you.